

**DEPARTMENT OF FORESTRY AND FIRE PROTECTION****Office of the State Fire Marshal**

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**RECEIVED****MAR 05 2008****COMMISSION ON
STATE MANDATES**

February 25, 2008

Commission on State Mandates
Nancy Patton, Assistant Executive Director
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Proposed Parameters and Guidelines
OSFM Response – Fire Safety Inspections of Care Facilities, 01-TC-16
Health and Safety Code Sections 1531.2, 1569.149, 1596.809, 13144.5, and 13235
Statutes 1989, Chapter 993
City of San Jose, Claimant

Dear Ms. Patton:

The Office of the State Fire Marshal (OSFM) has reviewed the above referenced documents and your letter attached dated February 7, 2008. The OSFM offers the following comments in rebuttal to the draft staff analysis.

The Health and Safety Code 13235 (a) states, " Upon receipt of a request from a prospective licensee of a community care facility, as defined in Section 1502, of a residential care facility for the elderly, as defined in Section 1569.2, or of a child day care facility, as defined in Section 1596.750, the local fire enforcing agency, as defined in Section 13244, or State Fire Marshal, whichever has primary jurisdiction, shall conduct a pre-inspection of the facility prior to the final fire clearance approval....". It should be noted that these pre-inspections are not mandated by the licensing agency for these occupancies and are requested by the prospective licensee.

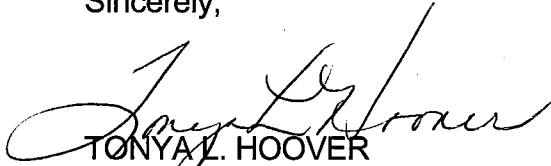
As to the extent of "primary jurisdiction", Health and Safety Code Section 13146(d) states the local enforcing agency could request the OSFM to assume jurisdiction for these community care facilities provided that the OSFM has the resources to fulfill the request. There are some locations where these facilities are located on state property and would be the responsibility of the State Fire Marshal.

It is our belief that locals do have the ability to "opt out" of the pre-inspections by requesting the SFM to assume these pre-inspection services. We also believe that the education and training necessary to conduct a pre-inspection is the same level education and training needed to conduct the required final inspections.

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If you or members of the Commission have further questions for the Office of the State Fire Marshal, please feel free to contact me at (916) 445-8200. Thank you for the opportunity to respond to the Commission's draft staff report.

Sincerely,



TONYA L. HOOVER
Assistant State Fire Marshal

Attachments:

13146. The responsibility for enforcement of building standards adopted by the State Fire Marshal and published in the California Building Standards **Code** relating to fire and panic **safety** and other regulations of the State Fire Marshal shall be as follows:

(a) The city, county, or city and county with jurisdiction in the area affected by the standard or regulation shall delegate the enforcement of the building standards relating to fire and panic **safety** and other regulations of the State Fire Marshal as they relate to R-3 dwellings, as described in Section 1201 of Part 2 of the California Building Standards **Code**, to either of the following:

(1) The chief of the fire authority of the city, county, or city and county, or his or her authorized representative.

(2) The chief building official of the city, county, or city and county, or his or her authorized representative.

(b) The chief of any city or county fire department or of any fire protection district, and their authorized representatives, shall enforce within its jurisdiction the building standards and other regulations of the State Fire Marshal, except those described in subdivision (a) or (d).

(c) The State Fire Marshal shall have authority to enforce the building standards and other regulations of the State Fire Marshal in areas outside of corporate cities and districts providing fire protection services.

(d) The State Fire Marshal shall have authority to enforce the building standards and other regulations of the State Fire Marshal in corporate cities and districts providing fire protection services upon request of the chief fire official or the governing body.

(e) Any fee charged pursuant to the enforcement authority of this section shall not exceed the estimated reasonable cost of providing the service for which the fee is charged, pursuant to Section 66014 of the Government **Code**.

13146.1. (a) Notwithstanding the provisions of Section 13146, the State Fire Marshal, or the State Fire Marshal's authorized representative, shall inspect every jail or place of detention for persons charged with or convicted of a crime, unless the chief of any city or county fire department or fire protection district, or that chief's authorized representative, indicates in writing to the State Fire Marshal that inspections of jails or places of detention, therein, shall be conducted by the chief, or the chief's authorized representative and submits the reports as required in subdivision (c).

(b) The inspections shall be made at least once every two years for the purpose of enforcing the regulations adopted by the State Fire Marshal, pursuant to Section 13143, and the minimum standards pertaining to fire and life **safety** adopted by the Board of Corrections, pursuant to Section 6030 of the Penal **Code**.

(c) Reports of the inspections shall be submitted to the official in charge of the facility, the local governing body, the State Fire Marshal, and the Board of Corrections within 30 days of the inspections.

13146.2. (a) Every city or county fire department or district providing fire protection services required by Sections 13145 and

13146 to enforce building standards adopted by the State Fire Marshal and other regulations of the State Fire Marshal shall, annually, inspect all structures subject to subdivision (b) of Section 17921, except dwellings, for compliance with building standards and other regulations of the State Fire Marshal.

(b) A city, county, or district which inspects a structure pursuant to subdivision (a) may charge and collect a fee for the inspection from the owner of the structure in an amount, as determined by the city, county, or district, sufficient to pay its costs of that inspection.

13146.3. The chief of any city or county fire department or district providing fire protection services and his or her authorized representatives shall inspect every building used as a public or private school within his or her jurisdiction, for the purpose of enforcing regulations promulgated pursuant to Section 13143, not less than once each year. The State Fire Marshal and his or her authorized representatives shall make these inspections not less than once each year in areas outside of corporate cities and districts providing fire protection services.

13146.5. The provisions of Sections 13145, **13146** and **13146.3** shall, so far as practicable, be carried out at the local level by persons who are regular full-time members of a regularly organized fire department of a city, county, or district providing fire protection services, and shall not be carried out by other persons pursuant to Section 34004 of the Government Code.

CALIFORNIA CODES
HEALTH AND **SAFETY** CODE
SECTION 13235

13235. (a) Upon receipt of a request from a prospective licensee of a community care facility, as defined in Section 1502, of a residential care facility for the elderly, as defined in Section 1569.2, or of a child day care facility, as defined in Section 1596.750, the local fire enforcing agency, as defined in Section 13244, or State Fire Marshal, whichever has primary jurisdiction, shall conduct a preinspection of the facility prior to the final fire clearance approval. At the time of the preinspection, the primary fire enforcing agency shall provide consultation and interpretation of fire **safety** regulations, and shall notify the prospective licensee of the facility in writing of the specific fire **safety** regulations which shall be enforced in order to obtain fire clearance approval. A fee of not more than fifty dollars (\$50) may be charged for the preinspection of a facility with a capacity to serve 25 or fewer persons. A fee of not more than one hundred dollars (\$100) may be charged for a preinspection of a facility with a capacity to serve 26 or more persons.

(b) The primary fire enforcing agency shall complete the final fire clearance inspection for a community care facility, residential care facility for the elderly, or child day care facility within 30 days of receipt of the request for the final inspection, or as of the date the prospective facility requests the final prelicensure inspection by the State Department of Social Services, whichever is later.